109

(3)

No. 08-236

Supreme Court, U.S.
FILED
OCT 24 2008
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

JAMES "JIMMY" FAHRENHOLTZ,

Petitioner,

v.

CONRAD S. P. WILLIAMS, III, *ET AL.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF LOUISIANA, FOURTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT CONRAD S.P. WILLIAMS, III

BENJAMIN D. BEYCHOK
BEYCHOK LAW FIRM
715 St. Ferdinand St.
Baton Rouge, LA 70802
Tel: (225) 336-3000
Fax: (225) 336-3008

JOSEPH G. JEVIC III
Counsel of Record
CHARLES C. BOURQUE, JR.
MELANIE G. LAGARDE
ST. MARTIN, WILLIAMS & BOURQUE
4084 Hwy. 311
P. O. Box 2017
Houma, Louisiana 70361-2017
Tel: (985) 876-3891
Fax: (985) 851-2219

Counsel for Respondent
Conrad S.P. Williams, III

218777

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF CITED AUTHORITIES ii

STATEMENT OF THE CASE 1

A. Facts 1

B. Action of the Civil District Court for the Parish of Orleans 2

C. Action of the Louisiana Fourth Circuit Court of Appeal 2

D. Action of the Louisiana Supreme Court . 2

LAW AND ARGUMENT 3

A. This Court Lacks Jurisdiction to Consider this Writ Application 3

B. Fahrenholtz had Adequate Opportunity to Properly Challenge the Constitutionality of the Statutes Below 6

CONCLUSION 7

TABLE OF CITED AUTHORITIES

Page

Cases:

Adams v. Robertson,
520 U.S. 83, 117 S.Ct. 1028,
137 L.Ed.2d 203 (1997) 4

Illinois v. Gates,
462 U.S. 213, 103 S.Ct. 2317,
76 L.Ed.2d 527 (1983) 4

McGoldrick v. Compagnie Generale,
309 U.S. 430, 60 S.Ct. 670,
84 L.Ed. 849 (1940) 4

Webb v. Webb, 451 U.S. 493, 101 S.Ct. 1889,
68 L.Ed.2d 392 (1981) 4

Williams v. Fahrenholtz,
2008-0961 (La.App. 4th Cir. 7/25/08),
__ So.2d __, 2008 WL 2861718 ..... 2, 5

Williams v. Fahrenholtz,
2008-C-1680 (La. 7/30/08), 986 So.2d 671 2

Statutes:

28 U.S.C. § 1257 3

La.R.S. § 18:463 1

La.R.S. § 18:492 1

Cited Authorities

	Page
La.R.S. § 18:1274	1
La.R.S. § 18:1275.18	1
La.R.S. § 18:1401	1, 6
La.R.S. § 18:1409	6
La. Code Civ. Pro. Art. 1871	6
La. Code Civ. Pro. Art. 3601	6
La. Code Civ. Pro. Art. 3602	6

STATEMENT OF THE CASE

A. Facts:

Applicant, James "Jimmy" Fahrenholtz, filed a Notice of Candidacy ("Notice") for the Democratic Primary Election for the Second Congressional District[1] with the Louisiana Secretary of State on July 11, 2008. Said Notice of Candidacy was filed pursuant to La.R.S. § 18:1274. Among the various certifications required in said Notice are the following:

a) that he does not owe any outstanding fines, fees, or penalties pursuant to the Campaign Finance Disclosure Act ("CFDA"); and

b) that all of the statements contained in it are true and correct.

La.R.S. § 18:463(2)(a).

Utilizing the procedures set forth in La.R.S. §§ 18:1275.18 and 1401 *et seq.*, Respondent, Conrad S.P. Williams, III, filed suit challenging Fahrenholtz's candidacy on the grounds that Fahrenholtz falsely certified on his notice of candidacy that he does not owe any outstanding fines, fees, or penalties pursuant to the CFDA. La.R.S. § 18:492(5).

---

[1] The Primary was originally scheduled for September 6, 2008 then postponed until October 4, 2008 as a result of Hurricane Gustav.

B. Action of the Civil District Court for the Parish of Orleans:

This matter was tried in the Civil District Court for the Parish of Orleans on July 22, 2008. At trial, Fahrenholtz admitted to owing approximately $15,000 in outstanding fines pursuant to the CFDA and that he signed the Notice despite the existence of said fines. Relying upon Louisiana law, the court upheld Williams' challenge and entered a judgment disqualifying Fahrenholtz from the upcoming election.

C. Action of the Louisiana Fourth Circuit Court of Appeal:

An appeal was lodged with the Fourth Circuit Court of Appeal, which held oral argument on July 24, 2008. On July 25th, an equally split court, relying upon Louisiana law, entered judgment affirming the judgment of the trial court noting that Fahrenholtz did not properly raise issues related to the constitutionality of the statutes applied herein. *Williams v. Fahrenholtz,* 2008-0961, p.4, n.1 (La.App. 4th Cir. 7/25/08), __ So.2d __, 2008 WL 2861718, *2, n.1.

D. Action of the Louisiana Supreme Court:

On July 30, 2008, the Louisiana Supreme Court denied Fahrenholtz's writ application. *Williams v. Fahrenholtz,* 2008-C-1680 (La. 7/30/08), 986 So.2d 671.

LAW AND ARGUMENT

A. This Court Lacks Jurisdiction to Consider this Writ Application:

Certiorari jurisdiction over decisions from state courts derives from 28 U.S.C. § 1257, which provides that "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where"

1: "the validity of a treaty or statute of the United States is drawn in question . . . ,"

2. "the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or"

3. "any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

This Court

> "held early on that § 25 of the Judiciary Act of 1789 furnished us with no jurisdiction unless a federal question had been both raised and decided in the state court below. As Justice Story wrote in *Crowell v. Randell*, 10

> Pet. 368, 391, 9 L.Ed. 458 (1836), 'If both of these requirements do not appear on the record, the appellate jurisdiction fails.'"

Illinois v. Gates, 462 U.S. 213, 218; 103 S.Ct. 2317, 2321; 76 L.Ed.2d 527 (1983).

> In cases coming here from state courts in which a state statute is assailed as unconstitutional, there are reasons of peculiar force which should lead us to refrain from deciding questions not presented or decided in the highest court of the state whose judicial action we are called upon to review. Apart from the reluctance with which every court should proceed to set aside legislation as unconstitutional on grounds not properly presented, due regard for the appropriate relationship of this Court to state courts requires us to decline to consider and decide questions affecting the validity of state statutes not urged or considered there. It is for these reasons that this Court . . . consistently refuses to consider any grounds of attack not raised or decided in that court.

Gates, 462 U.S. at 218-19; 103 S.Ct. at 2322 (citing, *McGoldrick v. Compagnie Generale*, 309 U.S. 430, 435-436, 60 S.Ct. 670, 673, 84 L.Ed. 849 (1940)). *See also, Adams v. Robertson*, 520 U.S. 83, 117 S.Ct. 1028, 137 L.Ed.2d 203 (1997); *Webb v. Webb*, 451 U.S. 493, 498-500; 101 S.Ct. 1889, 1893-4; 68 L.Ed.2d 392 (1981).

In the present case, although Fahrenholtz made reference to the constitutionality of applying the Louisiana statutes to his candidacy in various briefs submitted to the district court, court of appeal and state supreme court, Fahrenholtz never took the necessary steps to properly challenge said constitutionality, a defect noted by the Louisiana Fourth Circuit Court of Appeal:

> Mr. Fahrenholtz avers that the certification is an unconstitutional qualification. However, the constitutionality of a statute must first be questioned in the trial court and must be specifically pled. Specifically, 1) the constitutionality of a statute must first be questioned in the trial court, not the court of appeal; 2) the plea of unconstitutionality must be specifically pleaded to be considered by the trial court; and 3) the attorney general is an indispensable party who must be served." Mr. Fahrenholt's (*sic*) first mention of unconstitutionality was in a memorandum and not in a pleading, hence, constitutionality is not an issue under review by this Court.

Williams v. Fahrenholtz, 2008-0961, p.4, n.1 (La.App. 4 Cir. 7/25/08), 2008 WL 2861718, *2, n.1.

B. Fahrenholtz had Adequate Opportunity to Properly Challenge the Constitutionality of the Statutes Below:

Although Fahrenholtz argues that he did not have the practical ability to properly raise a constitutionality challenge below due to the time constraints set forth in La.R.S. § 18:1401 *et seq.*, this is not the case. Admittedly, La.R.S. § 18:1409 establishes certain timeframes for commencing trial and issuing its judgment; however, no limitation is placed on the duration of the trial.

The relevant portions of La.R.S. § 18:1409 provide that "trial shall begin no later than 10:00 a.m. on the fourth day after suit was filed" and that "the trial judge shall render judgment within twenty-four hours after the case is submitted to him. . . ." La.R.S. § 18:1409(A)(1) & (C). There exist no limitations on the duration of the trial or the ability of the judge to suspend proceedings to allow a candidate, such as Fahrenholtz, to properly file a constitutional challenge.

Had Fahrenholtz sought leave to properly raise his constitutional challenge, rather than merely making reference to his constitutionality claims in briefs submitted to the courts, he could have filed a petition for declaratory judgment in the district court seeking issuance of an injunction that would likewise be heard on an expedited basis along with the challenge to his candidacy. See La. Code Civ. Pro. Arts. 1871 *et seq.* (Declaratory judgments), & 3601 *et seq.* (Injunction, Art. 3602 – application for preliminary injunction shall be heard within two days of filing). If Fahrenholtz had

followed these procedures, the trial would have been delayed a mere two days and his constitutional defenses would have been properly preserved for appeal.

CONCLUSION

Since Fahrenholtz's constitutional challenge was never "pressed or passed on below" he cannot assert those claims for the first time before this Court. Wherefore, Respondent, Conrad S.P. Williams, III, respectfully submits that this Court lacks jurisdiction to consider Fahrenholtz's writ application and that said application be denied.

Respectfully submitted,

JOSEPH G JEVIC III
Counsel of Record
CHARLES C. BOURQUE, JR.
MELANIE G. LAGARDE
ST. MARTIN, WILLIAMS & BOURQUE
4084 Hwy. 311
P. O. Box 2017
Houma, Louisiana 70361-2017
Tel: (985) 876-3891
Fax: (985) 851-2219

BENJAMIN D. BEYCHOK
BEYCHOK LAW FIRM
715 St. Ferdinand St.
Baton Rouge, LA 70802
Tel: (225) 336-3000
Fax: (225) 336-3008

Counsel for Respondent
Conrad S.P. Williams, III